IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI

SECOND APPEAL NO. 63 OF 2005

M/s. Sociedade De Formento Industrial Ltd. .... Appellant

V e r s u s

1. The Government of Goa & Anr .... Respondents

Mr. M. S. Usgaonkar, Senior Advocate with Shri Sudesh Usgaonkar, Advocate for the Appellant.

Mr. S. R. Rivonkar, Advocate for the Respondents.

CORAM: D. D. SINHA, J.

DATE : **07.12.2005.**

P.C.

Heard Mr. Usgaonkar for the appellant and Mr. S. R. Rivonkar for the respondents.

2. The suit filed by the appellant(plaintiff) was dismissed and appeal preferred was also dismissed on the preliminary ground of jurisdiction. In the instant case, in order to consider the controversy in issue, it is necessary to consider the scheme of the provisions of the Forest Act of 1927, particularly Sections 4, 6, 7 and 9. Section 4 of the Act deals with the Notification to be issued by the State Government, whereby it is

required to be declared that the State has decided to constitute any land as reserved forest specifying as, nearly as possible, the situation and limits of such land as well as appointing an Officer i.e. Forest Settlement Officer to inquire into and determine the existence of rights, if any, in favour of any person over any land comprised within such limits. Section 6 of the Act deals with the proclamation of the Forest Settlement Officer and contemplates that when notification has been issued under Section 4, the Forest Settlement Officer shall publish in local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation specifying as, nearly as possible, the situation and limits of the proposed forest, explaining the consequences, which ensue on the reservation of such forest and also is required to fix a period of not less than three months from the date of such proclamation and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer, a written notice specifying or to appear before him and state, the nature of his right and the amount and particulars of the compensation (if any), claimed in respect thereof.

3. Section 9 of the Act deals with extinction of rights and contemplates that rights in respect of which no claim has been preferred

under Section 6, and consequently no inquiry is made under Section 7, shall be extinguished unless before the notification under Section 20 is published, the person claiming such right satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

4. In view of the above referred scheme of the Provision Act, it is evident that if the land which is notified as Reserved Forest under notification under Section 4 of the Act and, if anybody is aggrieved by the said notification or any right in respect of the said land is violated, in that event, the aggrieved person has to raise objections under the provisions of Section 6 before the Settlement Officer, who is required to inquire into such claim by conducting inquiry contemplated under Section 7 of the Act, however, if the aggrieved person fails to raise objection/claim before the Settlement Officer under Section 6, such right or claim by virtue of Section 9 shall be extinguished only with the exception that if there is sufficient cause for not preferring the claim or objection within the period fixed under Section 6, then such person is permitted to raise such objection or claim before notification under Section 20 is published. In the instant case, it is not in dispute that the appellants have not preferred any objections or claim

under Section 6 of the Act, after the Section 4 Notification is issued by the State Government and, therefore, by virtue of provisions of Section 9, their right or claim is extinguished. In the instant case, the appellants have also not preferred any objection or claim before issuance of notification under Section 20 of the Act.

5. The learned Senior Advocate Shri Usgaonkar further contended that the notification under Section 4 is only in respect of the land and does not cover the roads which are in existence in the said land, which is notified as a Reserved Forest vide Notification under Section 4 of the Act. Similarly, in view of Section 11, right of way is excluded from the operation of Section 4 Notification hence, question of making claim under Section 6 does not arise and, therefore, provisions of Section 9 of the Act are not attracted. It is, therefore, contended that right of way is excluded from the concept of land to be declared to be a forest by virtue of Notification under Section 4 and, therefore, the Civil Court in fact, has the jurisdiction to entertain the grievance of the petitioner and the suit, therefore, was maintainable.

6. The above referred contentions of the learned Senior Counsel, in view of the scheme of the provisions of the above referred Act, are

misconceived and devoid of substance particularly when the Settlement Officer under Section 7 is entitled to consider and inquire into any of the claims made under Section 6 including the claim in respect of right of way in respect of the land, which is notified under Section 4 of the Forest Act. Section 9 makes it clear that failure to make claim under Section 6 of the Act, such claim gets extinguished with the only exception that such claim can be entertained by the Settlement Officer before issuance of notification under Section 20, if there are sufficient and adequate reasons to demonstrate that such claim could not be made within the time prescribed under Section 6 of the Act. In the instant case, the petitioner did not make any claim under Section 6 of the Act nor before issuance of notification under Section 20 and, therefore, by virtue of Section 9, such claim of the petitioner is extinguished and, therefore, the Courts below were justified in dismissing the suit and appeal of the appellant.

7. So far as Section 11 is concerned, the title of the Section itself makes it evident that it deals with the power to acquire land over which, the right is claimed and, therefore, it is not relevant for the controversy in issue and it also does not come to the rescue of the appellant. The contention canvassed in this regard, therefore, cannot be accepted.

8. For the reasons stated herein above, there is no substantial question of law involved in the present Second Appeal and the same is, therefore, dismissed.

D.D.SINHA, J.

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